



## Act on Adult Responsibilities towards Children in Care

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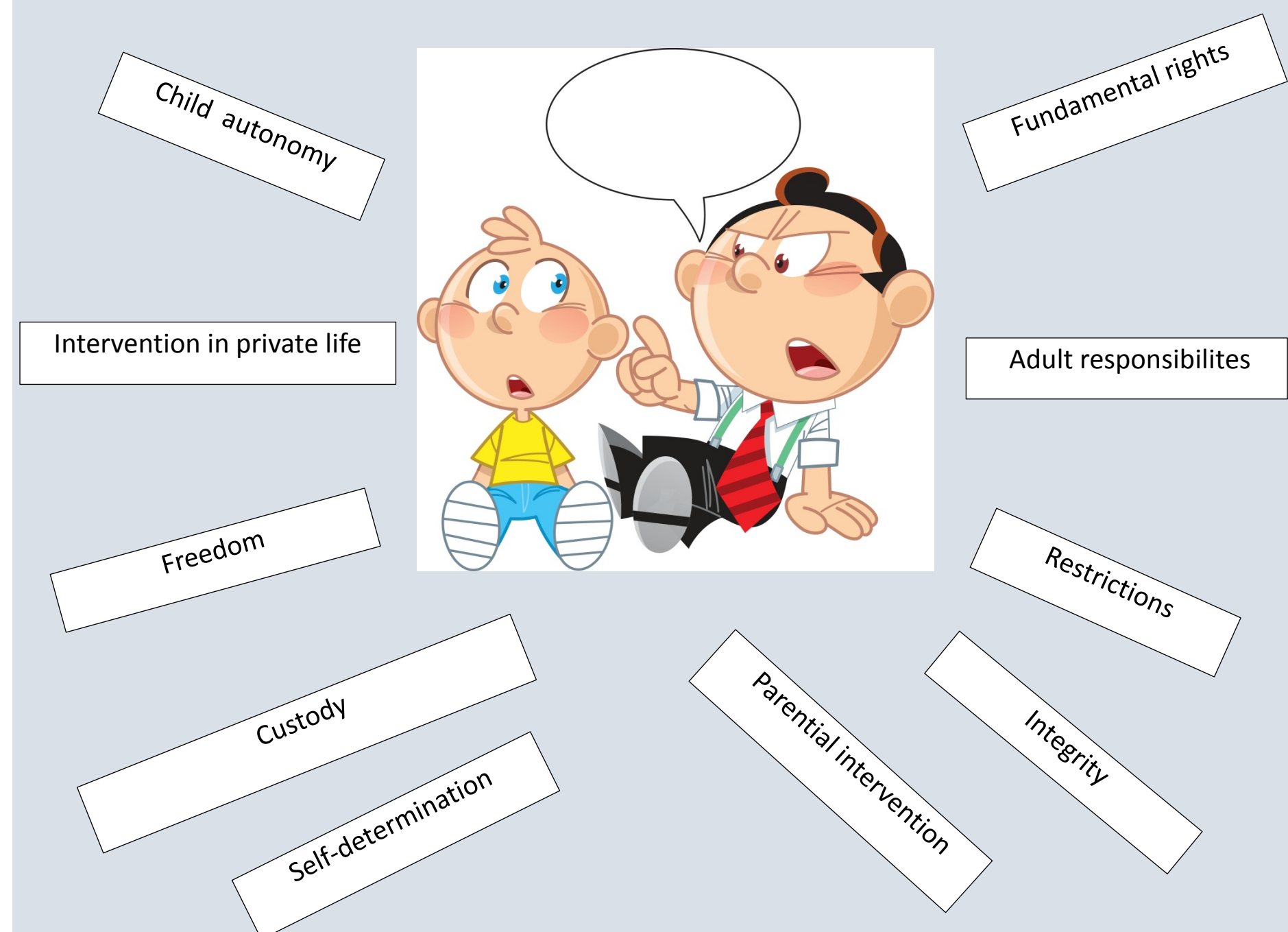
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## CHILDREN IN FOSTER CARE

### HOW TO STRIKE A BALANCE?



## BACKGROUND

- Children in foster care are a particularly vulnerable group.
- Foster parents and institutions tend to develop a closed culture.
- This requires rules to protect children from excessive disciplinary actions, force and intervention.
- From 2017 Denmark has got a new law – Act on adult responsibilities towards children in foster care.
- The purpose of this poster is to illustrate how the new Danish law deals with children's rights.

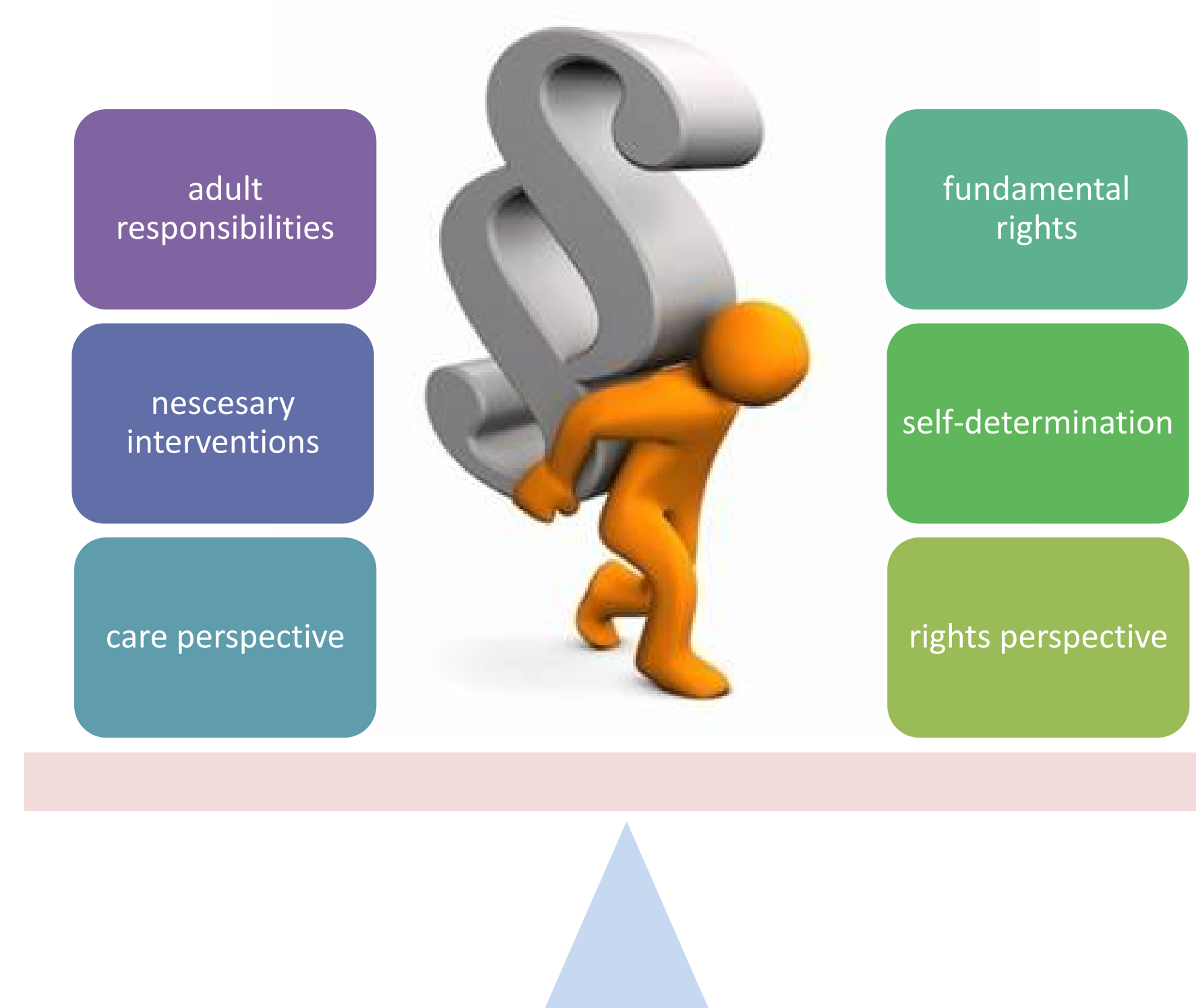
## METHOD

- Theoretical methodological basis is legal dogmatic method.
- As the act is new the preparatory work is relevant.
- Case-law on the topic is sparse therefore statements from the children's office at the Ombudsman and from the National Appeals Board are important sources.
- This poster takes a rights and care perspective.

## ADULT RESPONSIBILITIES

- The parents still have custody when children are placed in foster care.
- But the new law allow the foster family or the residential placement to make **NECESSARY INTERVENTIONS** in the child's or the youth's self-determination for the child interests including ensuring that the child or young person's physical and psychological needs are fulfilled and that the child or youth build skills to form social relationships wellbeing and receive learning.

## A NEW BALANCE

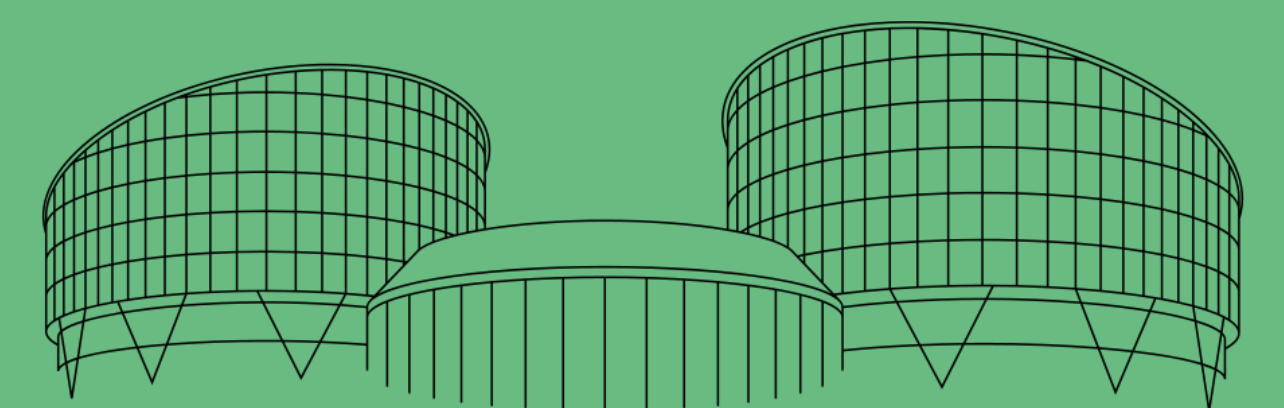


The responsibility to provide the daily care is **transferred** from the biological parents to the foster families or the staff at the residential care.

The child possesses autonomy, self-determination and integrity, but this is not absolute. Necessary interventions i.e. parental influence must be respected.

## FUDAMENTAL RIGHTS

- ECHR art. 3, 5 and 8.
- The convention of the child's rights, art. 3,5, 9, 12.
- Danish Constitution, § 71, 72.



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## NECESSARY INTERVENTIONS

- **Actions for protection are permitted.**
- **Actions regard to raising are permitted.**
- **Disciplinary actions are very restricted.**  
This means that the act to blame must be related to the reaction to give. It is never allowed to deprive food, drink, sleep, clothes or other basic goods to punish a child. It isn't allowed to withdraw the mobile phone as punishment for something that does not have with the phone to do. *Adjustments* can be made. It may be rules that the phone must not be turned on during school hours, during meals, or after a certain time in the evening. It is usually not proportional to exclude a young person from the community and order him to be in his room throughout the hole day.
- **Drug-tests can only be carried out voluntarily.**

## SELF-DETERMINATION

- Children possess autonomy.
- The content of self-determination depends on the age and maturity.
- The individual autonomy is subject to restrictions.
- The child must accept physical guidance.
- The child must accept reasonable house rules.
- The child must accept typical parental influence

## CARE PERSPECTIVE

- The best interest of the child is not only a rights perspective, but also a care perspective must be taken into account.
- The care perspective is a social professional standard based on balancing the child's age, maturity and need.

## CONCLUSION & PERSPCTIVES

- Children in foster care have the same rights as other children.
- The new law ensures that foster families and employees have the power to raise the children during placement.
- Humiliating and degrading treatment is prohibited.
- Using force is only allowed when it is directly stated in the law.
- General principles of intensity and proportionality apply.

## RIGHTS PERSPECTIVE

- The rights perspective is the basic legal principles and values based on respect for individual autonomy.
- A child's perspective expresses that the child is an independent individual, and that all decisions must be based on what is in the best interest of the child.
- The individual autonomy or self-determination is subject to restrictions, but the specific content and limitations of the child's self-determination are unclear.

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